



**Permanent Select Committee
on Intelligence
U.S. House of Representatives**

September 18, 2019

The Honorable Joseph Maguire
Acting Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Acting Director Maguire:

The House Permanent Select Committee on Intelligence (“Committee”) has agreed to postpone by one week your public testimony on the urgent whistleblower disclosure that your office continues to withhold from the Committee. As confirmed by your office, and in lieu of issuing a subpoena for your testimony, you have agreed to appear for a full Committee open hearing at 9 a.m. on Thursday, September 26, 2019.

The Committee is making this extraordinary accommodation to provide your office a good-faith opportunity to comply in full with the Committee’s duly authorized September 13 subpoena, which compelled your production of the complete, unaltered whistleblower complaint, the Inspector General of the Intelligence Community’s (“IC IG”) determination that the complaint appears credible, and other materials related to the unprecedented decision not to transmit the disclosure to the Committee, including any communications by your office with the Department of Justice (“DOJ”) or the White House, or that reflect either.¹ The Committee subpoena for these materials remains in full effect. Your office has not complied with the subpoena thus far, in defiance of the production deadline of September 16.

The Committee has approached this breach of practice and law with the urgency it requires. On August 12, 2019, an individual within the Intelligence Community had the courage to submit to the IC IG a lawful complaint, pursuant to the whistleblower statute, intended for the congressional intelligence committees. According to the IC IG, the complaint alleged “a serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information.”²

¹ Letter from Chairman Schiff to Acting Director of National Intelligence Maguire, September 13, 2019, with attached Committee Subpoena and Schedule A.

² 50 U.S.C. § 3033(k)(5)(G).

The whistleblower's complaint triggered a 14-day review period in which the IC IG determined the disclosure met the statutory requirements of an "urgent concern" and appeared credible, followed by a 7-day period within which you, as Acting Director of National Intelligence ("DNI"), were statutorily mandated to transmit the full complaint and accompanying materials to the congressional intelligence committees. The Committee, therefore, should have received the complaint and accompanying materials no later than September 2.

It is now more than two weeks since the deadline for you to have transmitted the complaint to the Committee. If you do not transmit the "urgent concern" by the date of your testimony, it will be more than three weeks since the Committee should have received the complaint and more than seven weeks since the disclosure was first submitted to the IC IG, during which an urgent and credible allegation of serious or flagrant wrongdoing remains concealed from the Committee and unaddressed. The decision to ignore the statute, moreover, has precipitated a broader crisis of confidence and trust that threatens profound harm to the integrity of the Intelligence Community's whistleblower process, with potentially far-reaching consequences.

Consistent with his statutory obligation to report to the intelligence committees if he "is unable to resolve any differences" with you,³ the IC IG submitted a report to the Committee yesterday to notify us that he has reached an impasse with you.⁴ The IC IG informed the Committee that, although he believes he is bound by the determination you reached after your anomalous consultations with DOJ, he "respectfully disagrees" with your determination, and "particularly DOJ's conclusion,"⁵ that "no statute requires disclosure of the complaint to the intelligence committees" because "the disclosure in this case did not concern allegations of conduct by a member of the Intelligence Community or involve an intelligence activity under the DNI's supervision."⁶

In a September 17 letter to DOJ, which we have yet to receive because it involves a fact-specific analysis of the complaint that is being kept from the Committee, IC IG Atkinson states emphatically that he "set forth his reasons for concluding that the subject matter involved in the Complainant's disclosure not only falls within the DNI's jurisdiction, *but relates to one of the most significant and important of the DNI's responsibilities to the American people.*"⁷

In addition, the IC IG informed the Committee that, despite his request to you, he still has "not been authorized to disclose even" the general subject matter of the complainant's

³ 50 U.S.C. § 3033(k)(3)(A)(i).

⁴ Letter from IC IG Atkinson to Chairman Schiff and Ranking Member Nunes, September 17, 2019.

⁵ *Id.* at p. 2.

⁶ Letter from Office of Director of National Intelligence General Counsel Jason Klitenic to Chairman Burr, Chairman Schiff, Vice Chairman Warner, and Ranking Member Nunes, September 13, 2019.

⁷ Letter from IC IG Atkinson to Chairman Schiff and Ranking Member Nunes, September 17, 2019, at p. 2.

allegations, “in addition to the important information provided by the complainant that is also being kept from the congressional intelligence committees.”⁸

Moreover, the IC IG has clarified that it appears to him that you, in your capacity as Acting DNI, have “no present intention of providing direction to the Complainant, through [the IC IG], on how the Complainant can contact the congressional intelligence committees directly ‘in accordance with appropriate security practices.’”⁹ Although you have made an assurance, as stated in your office’s September 17 letter, that ODNI “will not permit the complainant to be subject to any retaliation or adverse consequence based upon his or her communicating the complaint to the ICIG,”¹⁰ we concur with the IC IG that such a personal assurance is insufficient and is no substitute for “the legally enforceable statutory protection previously available to whistleblowers in the Complainant’s situation.”¹¹

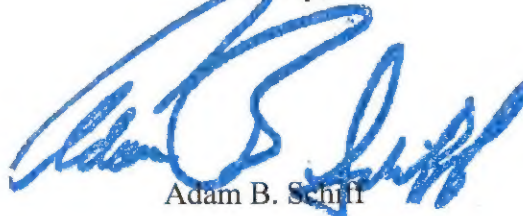
In fact, your actions in withholding the whistleblower’s complaint from our Committee and preventing that person from communicating directly with us send a very different message to the whistleblower: you will only be protected if you stay silent and your concerns go unaddressed. This is not in the interests of the Intelligence Community, its employees, or the country. And, more specifically, it violates the clear letter of the law compelling you to transmit the complaint to us.

These troubling developments are a direct consequence of your office’s decision, with the involvement of DOJ and possibly the White House, to circumvent the statute to conceal a credible allegation of serious or flagrant wrongdoing from the Committee.

The Committee—and the American public—need answers and transparency, and your public testimony on September 26 will be an important opportunity for both. The Committee is also prepared to hold a follow-on closed session after your public hearing to address any classified information about the substance of the complaint.

Should you have any questions prior to the hearing, please have your staff contact the Committee’s General Counsel, Maher Bitar, and Senior Advisor, Daniel Goldman.

Sincerely,



Adam B. Schiff

⁸ *Id.* at p. 2.

⁹ *Id.* at p. 2.

¹⁰ Letter from Office of Director of National Intelligence General Counsel Jason Klitenic to Chairman Burr, Chairman Schiff, Vice Chairman Warner, and Ranking Member Nunes, September 13, 2019.

¹¹ Letter from IC IG Atkinson to Chairman Schiff and Ranking Member Nunes, September 17, 2019, p. 2.